

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

PENNEY EVANS

APPELLANT,

**v.
STATE OF MISSOURI**

RESPONDENT.

DOCKET NUMBER WD72937
DATE: October 4, 2011

Appeal From:

Livingston County Circuit Court
The Honorable Richard B. Elliott, Judge

Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Attorneys:

Alexa I. Pearson, Columbia, MO, for appellant.

Shuan J. Mackelprang and Mary H. Moore, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

PENNEY EVANS,

APPELLANT,

v.

STATE OF MISSOURI,

RESPONDENT.

No. WD72937

Livingston County

Before Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Penney Evans appeals the motion court's denial of her Rule 24.035 motion for post-conviction relief.

AFFIRMED.

Division Two holds:

Evans pleaded guilty to the crime of possession of a controlled substance with the intent to distribute. At the plea hearing, the plea court asked Evans whether she thought the substance she distributed to an undercover agent was methamphetamine. Evans responded, "I don't know but I'm pretty sure it was." Evans then rejected an offer by the court to wait until the official lab tests were completed to confirm that the substance was methamphetamine before accepting her plea. Evans elected to proceed. The plea court found that there was a factual basis for her plea and found her guilty and sentenced her. Following Evans's probation revocation, she filed a post-conviction motion for relief, arguing the plea court erred in accepting her plea without requiring that a sufficient factual basis existed for the charge against her; specifically, that insufficient facts were presented to establish the substance she delivered was a controlled substance. The motion court rejected her post-conviction motion, finding a sufficient factual basis for the plea did exist. Evans now appeals.

We find a sufficient factual basis existed to support the finding that the substance Evans delivered was a controlled substance. If a guilty plea is knowingly and voluntarily made and unequivocal as to the factual elements necessary to constitute the offense, the plea forms the factual basis for the guilty plea. Here, in light of the entire plea colloquy, Evans's statement "I don't know but I'm pretty sure it was" is not equivocal. Evans agreed she was pretty confident that the substance was methamphetamine and she rejected an opportunity to wait for confirmatory testing. Multiple times in writing Evans asserted that she sold methamphetamine to an undercover agent. Given that Evans had an extensive history with methamphetamine and was familiar with the substance, these statements are sufficient to constitute a factual basis for her

plea. Evans was not equivocal as to the nature of the substance she distributed. Accordingly, the motion court's findings were not clearly erroneous.

Opinion by Gary D. Witt, Judge

October 4, 2011

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